

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID L. ROGERS,

Defendant.

8:18CR352

ORDER

This matter is before the Court on defendant David L. Rogers's ("Rogers") Motion to Suppress (Filing No. 18) "all evidence obtained as a result of a traffic stop on October 18, 2018[,] by the Dodge County Sheriff's Department near westbound Highway 30, approaching Ames, Nebraska." The Court referred Rogers's motion to the magistrate judge¹ for initial review in accordance with 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Criminal Procedure 59(b)(1).

Following an evidentiary hearing, the magistrate judge issued a Findings and Recommendation (Filing No. 33) on July 5, 2019, recommending the Court deny the motion. The magistrate judge concluded Dodge County Deputy Sheriff Michael Schlesiger ("Deputy Schlesiger") had probable cause to stop Rogers's vehicle because he observed Rogers swerve and cross the solid white fog line and drive on the shoulder in violation of Nebraska law. *See* Neb. Rev. Stat. § 60-6,142; *State v. Magallanes*, 824 N.W.2d 696, 701 (Neb. 2012). The magistrate judge further concluded Deputy Schlesiger had sufficient reasonable suspicion of criminal activity to detain Rogers for further investigation based, at least in part, on Deputy Schlesiger's observation of "the clear end of a glass pipe with black burnt substance in plain view in the [vehicle's] back seat."

¹The Honorable Michael D. Nelson, United States Magistrate Judge for the District of Nebraska.

On July 19, 2019, Rogers objected (Filing No. 34) to the magistrate judge's findings that Deputy Schlesiger observed Rogers swerve over the road lines and saw a glass pipe in the back seat. Rogers accordingly objected to the "finding that the stop was supported by reasonable basis to believe a traffic law was violated and that Deputy Schlesiger had reasonable suspicion of criminal activity to detain" Rogers.

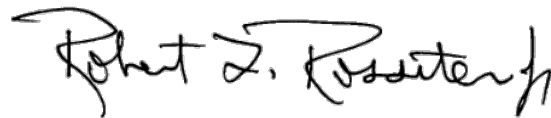
After careful de novo review as required by 28 U.S.C. § 636(b)(1), the Court concludes Rogers's objections lack merit and his motion to suppress should be denied for the reasons stated by the magistrate judge. The Court agrees with the magistrate judge that (1) Deputy Schlesiger had probable cause to believe Rogers violated the traffic code and (2) "the totality of the circumstances provided Deputy Schlesiger with reasonable suspicion of criminal activity to detain [Rogers] and conduct a reasonable investigation, including [a] canine sniff of [Rogers's vehicle]." As such,

IT IS ORDERED:

1. Defendant David L. Rogers's objections (Filing No. 34) are overruled.
2. The magistrate judge's Findings and Recommendation (Filing No. 33) is accepted.
3. Rogers's Motion to Suppress (Filing No. 18) is denied.

Dated this 7th day of August 2019.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Robert F. Rossiter, Jr.", with a stylized flourish at the end.

Robert F. Rossiter, Jr.
United States District Judge